

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

A. FERLITO FARMS, INC.,

Plaintiff,

-vs-

EMPIRE FRESH CUTS, LLC,
JAMES R. ZAPPALA and
SAMUEL A. ZAPPALA,

Defendants.

**ORDER TO SHOW CAUSE
WHY PRELIMINARY INJUNCTION
SHOULD NOT BE ENTERED
AND *EX PARTE* TEMPORARY
RESTRAINING ORDER**

Civil Case No. 5:10-cv-1044 (GTS/ATB)

Upon review of the Complaint of Plaintiff A. Ferlito Farms, Inc. on file in the above-captioned action; the Declaration of Joseph A. Ferlito, President of A. Ferlito Farms, Inc. ("Ferlito Farms") with exhibits; the Attorney Certification as to why notice of the Plaintiff's request for a temporary restraining order should not be required pursuant to Rule 65(a) of the Fed.R.Civ.P.; the Memorandum of Law in Support of Plaintiff's Application for an *ex parte* Temporary Restraining Order and/or Preliminary Injunction submitted therewith; and all other pleadings, papers and proceedings heretofore had herein, and it appearing to the satisfaction of the Court that this is a proper case for granting an *ex parte* Temporary Restraining Order and Order to Show Cause;

IT IS HEREBY ORDERED that Defendants show cause before this Court on the 15th day of September, 2010 to be heard **on submit** in Syracuse, New York before the Honorable Glenn T. Suddaby with **no personal appearance necessary**, why an order for Preliminary Injunction should not be entered in accordance with Rule 65(a) of the Fed.R.Civ.P. to enforce the statutory trust pursuant to Section 5(c)3 of the Perishable Agricultural Commodities Act, 7 U.S.C. §499e(c), by segregating all trust assets of Empire Fresh Cuts, LLC; and sufficient cause appearing therefore, it is:

ORDERED that pending hearing and determination of Plaintiff's Application for a Preliminary Injunction, Defendant Empire Fresh Cuts, its agents, officers, directors, members, including Defendants James R. Zappala and Samuel A. Zappala, subsidiaries, assigns and financial and banking institutions, including but not limited to Pathfinder Bank, shall not alienate, dissipate, pay over or assign any PACA trust assets to any creditor, person or entity, without agreement of the parties or until further order of this Court, or until the Defendants pay Ferlito Farms by cashiers' check or certified check the principal amount owed to Plaintiff of \$429,590.00. Under §499e(c)(2) of PACA, trust assets include perishable agricultural commodities received by a commission merchant, dealer or broker in all transactions, and all inventories of food or other products derived from perishable agricultural commodities, and any receivables or proceeds from the sale of such commodities or products; and it is further

ORDERED that this Order shall be binding upon the parties to this action, their officers, agents, employees, banking institutions, or attorneys and all other persons or entities who receive actual notice of this Order by personal service or otherwise; and it is further

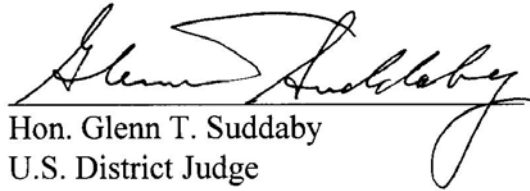
ORDERED that the \$429,590.00 in PACA Trust assets belonging to Plaintiffs and in the possession of the Defendant will serve as Plaintiffs' security for this injunction as required by Rule 65(c) of the Federal Rules of Civil Procedure; and it is further

ORDERED that Ferlito Farms must serve on Defendants, or their resident agent, or their counsel a copy of this Order to Show Cause and Temporary Restraining Order, by personal service, including overnight mail, on or before the end of the 2nd day of September, 2010. Such service will be deemed good and sufficient; and it is further

ORDERED that opposition papers shall be filed and served by personal service, including overnight mail, no later than September 9, 2010; and reply papers in further support of this application shall be served by personal service, including overnight mail, no later than September 13, 2010.

IT IS SO ORDERED

Dated: September 1, 2010
at 3:15 p.m.
Syracuse, NY


Hon. Glenn T. Suddaby
U.S. District Judge